NUMBER _____

4TH CIVIL NUMBER 28158

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SUPREME COURT, U.S.

ORIGINAL 83-6021

SUPREME COURT OF THE UNITED STATES

TERM 1983-1984

ALAN N. ROGERS,
Plaintiff & Appellant,
v.
TIMOTHY SCOTT FARQUAR,
Defendant & Appellee.

ON APPEAL FROM THE SUPREME COURT OF CALIFORNIA

JURISDICTIONAL STATEMENT

ALAN N. ROGERS
3362 Meade Avenue
San Diego, California 92116

Plaintiff appearing in
Propria Persona

TOPICAL INDEX

		Page
	TABLE OF AUTHORITIES	iii
A.	STATEMENT OF QUESTION PRESENTED BY APPEAL	1
B.	LIST OF PARTIES	2
C.	TABLE OF CONTENTS & TABLE OF AUTHORITIES	2
D.	REFERENCE TO OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS DELIVERED	2
E.	GROUNDS ON WHICH THE JURISDICTION OF THE COURT IS ENVOKED	2
	NATURE OF THE PROCEEDINGS	2
	DATE OF ENTRY OF JUDGMENT SOUGHT TO BE REVIEWED & DATE AND COURT WHERE NOTICE OF APPEAL FILED	2
	STATUTORY PROVISION CONFIRING JURISDICTION ON THIS COURT	3
F.	CONSTITUTIONAL PROVISION, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS THAT THE CASE INVOLVES	3
	CALIFORNIA GOVERNMENT CODE SECTION 855.8	3
	CALIFORNIA GOVERNMENT CODE SECTION 856	4
	CALIFORNIA WELFARE & INSTITUTION CODE, SECTION 5150	4
	UNITED STATES CONSTITUTION, AMENDMENT 4	5
G.	CONCISE STATEMENT OF CASE & STAGE IN PROCEEDINGS AT WHICH QUESTIONS SOUGHT TO BE REVIEWED WERE RAISED, METHOD OF RAISING ISSUE & HOW PASSED UPON BY THE COURT	5
H.	REASONS WHY QUESTIONS PRESENTED ARE SO SUBSTANTIAL AS TO REQUIRE PLENARY CONSIDERATION ON THE MERITS	8
I.	ABUSE OF DISCRETION REGARDING DISTRICT COURT PRELIMINARY INJUNCTION	9
J.	APPENDIX	10
	COMPLAINT FOR DAMAGES	12
	AMENDMENT TO COMPLAINT	16
	ADVISEMENT RECORD	18

APPLICATION FOR 72-HOUR DETENTION FOR EVALUATION AND TREATMENT 19

SAN DIEGO POLICE DEPARTMENT OFFICER'S REPORT 20

SAN DIEGO POLICE DEPARTMENT OFFICER'S REPORT, ATTN: ALL UNITS 23

ORDER DENYING DEFENDANT'S MOTION TO REQUIRE PLAINTIFF TO POST SECURITY 24

JUDGMENT 25

STATEMENT OF DECISION 27

DECISION OF COURT OF APPEAL 32

ORDER ON PETITION FOR REHEARING 36

ORDER OF CALIFORNIA SUPREME COURT 37

NOTICE OF APPEAL 38

TABLE OF AUTHORITIES

	Page
CALIFORNIA GOVERNMENT CODE SECTION 855.8	3
CALIFORNIA GOVERNMENT CODE SECTION 856	4
CALIFORNIA WELFARE & INSTITUTION CODE, SECTION 5150 ..	4
UNITED STATES CONSTITUTION, AMENDMENT 4	5

Pursuant to Rules of the Supreme Court of the United States, Rules 12, 15, 33, 39 & 46, appellant hereby files the required Jurisdictional Statement in the above-entitled action.

A. STATEMENT OF QUESTION PRESENTED BY APPEAL

The issue is whether or not a police officer can be improperly permitted immunity from civil litigation for false imprisonment by California Courts who choose to ignore California Government Code Sections 855.8(c) and 856(c), infra, and consider only Government Code Sections 855.8(a) and 856(a), infra, which renders California Government Code Sections 855.8 and 856 repugnant to the Fourth Amendment of the United States Constitution.

If defendant did not have probable cause to detain and transport plaintiff to a mental facility, under Section 5150 of California Welfare and Institution Code, infra, then defendant's action was wrongful. At trial defendant did not and could not prove he had probable cause to detain or transport plaintiff under said section. Therefore defendant's action was wrongful.

California Government Code Section 855.8(c) states "Nothing in this section exonerates a public employee who has undertaken to prescribe for mental illness or addiction from liability for injury proximately caused by his negligence or by his wrongful acts in so prescribing." Similarly, California Government Code Section 856(c), infra, states defendant is not exonerated for his negligent or wrongful acts in carrying out a determination to confine a person for mental illness.

California Courts purport absolute immunity by applying Subsections (a) of California Government Code Sections 855.8 and 856 without considering California Government Code Sections 855.8(c) and 856(c) which preclude immunity. This is repugnant to the Fourth Amendment to the United States Constitution, infra.

B. LIST OF PARTIES

The parties are plaintiff and appellant ALAN N. ROGERS and defendant and appellant TIMOTHY SCOTT FARQUAR. The City of San Diego has a vested interst in the outcome of the litigation because of the employer-employee relationship that existed between said city and said defendant.

C. TABLE OF CONTENTS & TABLE OF AUTHORITIES

Document preceeded by Table of Contents and Table of Authorities.

D. REFERENCE TO OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS DELIVERED

POSTCARD from California State Supreme Court, dated October 5, 1983, affirming judgment.

OPINION of California Court of Appeal, filed August 12, 1983, affirming judgment of Superior Court.

ORDER of California Court of Appeal, filed August 31, 1983, denying Petition for Rehearing.

JUDGMENT of Superior Court, filed July 1, 1982, for defendant.

STATEMENT OF DECISION of Superior Court, filed July 1, 1982.

REPORTER'S APPEAL TRANSCRIPT of trial had in Superior Court on June 2, 1982.

E. GROUNDS ON WHICH THE JURISDICTION OF THE COURT IS INVOKED

(i) NATURE OF THE PROCEEDINGS

This case is a Civil Action for False Imprisonment which occurred between August 24, 1979 and August 29, 1979.

(ii) DATE OF ENTRY OF JUDGMENT SOUGHT TO BE REVIEWED & DATE AND COURT WHERE NOTICE OF APPEAL FILED

November 16, 1983 NOTICE OF APPEAL to Supreme Court of the United States, filed in California Court of Appeal, Fourth District.

October 5, 1983 PETITION FOR HEARING denied by California Supreme Court.

August 31, 1983 PETITION FOR REHEARING denied by California Court of Appeal.

August 12, 1983 APPEAL resulting in judgment affirmed by California Court of Appeal.

June 2, 1983 TRIAL resulting in judgment for defendant by California Superior Court.

(iii) STATUTORY PROVISION CONFIRING JURISDICTION ON THIS COURT

This appeal is brought under the authority of Title 28, United States Code, Section 1257(2) where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution of the United States and the decision was in favor of its validity. This confers jurisdiction.

F. CONSTITUTIONAL PROVISION, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS THAT THE CASE INVOLVES

CALIFORNIA GOVERNMENT CODE SECTION 855.8

"Diagnosing or failing to diagnose mental illness or addiction

(a) Neither a public entity nor a public employee acting within the scope of his employment is liable for injury resulting from diagnosing or failing to diagnose that a person is afflicted with mental illness or addiction or from failing to prescribe for mental illness or addiction.

(b) A public employee acting within the scope of his employment is not liable for administering with due care the treatment prescribed for mental illness or addiction.

(c) **Nothing in this section exonerates** a public employee who has undertaken to prescribe for mental illness or addiction from liability for injury proximately caused by his negligence or by his wrongful acts in so prescribing.

(d) Nothing in this section exonerates a public employee from liability for injury proximately

caused by his negligent or wrongful act or omission in administering any treatment prescribed for mental illness or addiction."

CALIFORNIA GOVERNMENT CODE SECTION 856

"Determinations in accordance with applicable enactments
(a) Neither a public entity nor a public employee acting within the scope of his employment is liable for any injury resulting from determining in accordance with applicable enactments:
(1) Whether to confine a person for mental illness or addiction.
(2) The terms and conditions of confinement for mental illness or addiction.
(3) Whether to parole, grant a leave of absence to, or release a person confined for mental illness or addiction.
(b) A public employee is not liable for carrying out with due care a determination described in subdivision (a).
(c) **Nothing in this section exonerates** a public employee from liability for injury proximately caused by his negligent or wrongful act or omission in carrying out or failing to carry out:
(1) A determination to confine of not to confine a person for mental illness or addiction.
(2) The terms or conditions of confinement of a person for mental illness or addiction.
(3) A determination to parole, grant a leave of absence to, or release a person confined for mental illness or addiction."

CALIFORNIA WELFARE & INSTITUTION CODE, SECTION 5150

"When any person, as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, member of the attending staff, as defined by regulation, of an evaluation facility designated by the county, designated members of a mobile crisis team provided by Section 5651.7, or other professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody and place him or her in a facility designated by the county and approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation.
Such facility shall require an application in writing stating the circumstances under which the person's condition was called to the attention of the officer, member of the attending staff, or professional person, and stating that the officer, member of the attending staff, or professional person has probable cause to believe that the person is, as a result of mental disorder, a danger to others, or to himself or herself, or gravely disabled."

UNITED STATES CONSTITUTION, AMENDMENT 4

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

G. CONCISE STATEMENT OF CASE & STAGE IN PROCEEDINGS AT WHICH QUESTIONS SOUGHT TO BE REVIEWED WERE RAISED, METHOD OF RAISING ISSUE & HOW PASSED UPON BY COURT

On or about July 19, 1979, plaintiff was en route to Sears in Hillcrest to pick up his weight lifting set prior to closing. (R.T. 26)* En route, plaintiff stopped off at a resturant for dinner. (R.T. 26) Since plaintiff wanted to arrive at Sears prior to their closing for the day and since he could not locate a clock in said resturant, plaintiff requested defendant tell plaintiff the time. (R.T. 26)

Plaintiff sat at the counter, ordered dinner, and a few minutes later, defendant came over and put his hands on plaintiff. (R.T. 26) Plaintiff requested defendant remove his hands from plaintiff. (R.T. 26) Defendant told plaintiff he did not like plaintiff, stated he had sent his son to the bathroom to determine if plaintiff was sexually interested in his son, and stated his walkie-talkie was a box that represented plaintiff. (R.T. 26-27)

Plaintiff asked defendant to stop annoying him and stated defendant was a dirty cop for making said remarks. (R.T. 27) Defendant became very angry and stated he wanted to pull out his gun and just point it at plaintiff. (R.T. 27) Defendant did return to his table, finished his dinner, and walked out without paying for his meal. (R.T. 27)

On Friday August 24, 1979, at 8 PM, defendant came to plaintiff's residence. (R.T. 27) Defendant stated he was very upset with plaintiff. (R.T. 27) Defendant stated he believed plaintiff had complained about him to his police department

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* Reporter's Transcript

resulting in his demotion. (R.T. 27) Defendant stated he was upset over purported postcards he received which he later claimed were purported death threats against him and a female companion. (R.T. 27-28)

Defendant and his cover officer physically hurt plaintiff even though plaintiff did not resist arrest. (R.T. 28) Both officers smashed plaintiff face down into the hood of a police vehicle. (R.T. 28)

Later defendant stated the reason why he did not handcuff plaintiff while taking him from his residence to the patrol vehcile was because he had hoped plaintiff would break away from him so he could shoot plaintiff in the back. (R.T. 28-29)

Plaintiff was transported to the San Diego Police Department, threatened with additional physical violence by defendant, photographed, and transported to County Mental Health. (R.T. 29-30)

On Friday August 24, 1979, in order to have plaintiff admitted to said mental facility, defendant completed forms purporting plaintiff was a danger to others, a danger to himself, and gravely disabled. (T.E. 1)** In one of defendant's police reports dated August 25, 1979, defendant purports plaintiff "has the capability to kill someone and could and would if stopped by a police officer." (T.E. 1)

Plaintiff could not located his assigned psychiatrist until Monday August 27, 1979, his case was reviewed for one day by the psychiatrist, defendant was given 1 day notice plaintiff would be released since defendant stated criminal charges would be filed (none were ever filed), and plaintiff was released on Wednesday August 29, 1979. (R.T. 30-31)

Plaintiff filed a timely claim against defendant with the City of San Diego and said claim was denied on July 15, 1980 by Risk Management Department of the City of San Diego. (T.E. 4)

On November 5, 1979, plaintiff filed suit against defendant

** Trial Exhibit

for false imprisonment with malice by defendant. (C.T. 1-4)*** After a barrage of motions filed by defendant, defendant filed his motion to attempt to force plaintiff to post security. (C.T. 19-54) Plaintiff filed opposition to said motion. (C.T. 55-88) Said motion was denied since the judge ruled defendant was not immune because of Government Code Sections 855.8 and 856 and because defendant could not prove there was not a reasonable probability plaintiff could not prevail at trial. (C.T. 89)

The judge, who is now an appellate judge, stated plaintiff had an excellent case against the defendant, who was not immune from suit for false imprisonment because of Government Code Statutes, based upon the evidence in which defendant hung himself with his own handwriting in his police reports and reports he made to County Mental Health.

On March 18, 1982, **defendant first raised the issue** of immunity under Government Code Sections 855.8(a) and 856(a) in his Superior Court Motion for Judgment on the Pleadings. His motion was not granted.

On April 8, 1982, defendant raised the same issue of immunity **for a second time** in his Summary Judgment Motion. Said motion was denied and the judge ruled the defendant was not immune under Government Code Sections 855.8 and 856.

On April 8, 1982, defendant raised the issue of said purported immunity **for a third time** in his motion attempting to force plaintiff to post security. Judge Edward T. Butler ruled defendant was not immune from plaintiff's suit because of Government Code Sections 855.8 and 856.

On June 2, 1982, at trial, defendant raised the same issue of said purported immunity **for a fourth time.** Trial judge first decided defendant was not immune which was consistent with the previous decisions rendered; however, he changed his mind and accepted the purported immunity so beneficial to the City of

*** Clerk's Transcript

San Diego in a 5 day false imprisonment suit.

Thus, defendant raised the same issue of immunity four times until he found a judge who allowed the purported immunity so that defendant could improperly escape from the civil litigation.

Government Code Sections 855.8(a) and 856(a) are by themselves repugnant to the Fourth Amendment to the United States Constitution and the trial judge ruled in favor of their validity. All previous rulings in the case at bar were against said sections providing immunity because of Government Code Sections 855.8(c) and 856(c).

On August 12, 1983, California Court of Appeal ruled defendant was immune from civil litigation because of Government Code Sections 855.8(a) and 856(a). Said Court further purported defendant had probable cause to arrest for an offense and complaint failed to state detention was unlawful.

On August 31, 1983, California Court of Appeal denied plaintiff's Petition for Rehearing.

On October 5, 1983, Supreme Court of California denied plaintiff's Petition for Hearing which had been filed on September 8, 1983. Their postcard did not state any reason for the swift denial.

H. REASON WHY QUESTIONS PRESENTED ARE SO SUBSTANTIAL AS TO REQUIRE PLENARY CONSIDERATION ON THE MERITS

Without plenary consideration, plaintiff will continue to suffer a serious injustice and injury. There is a substantial federal question as to whether the United States Constitution, Amendment 4, can continue to be offended by the California Courts that have permitted improper immunity in order to wrongfully save the City of San Diego from a loss at trial.

Even if defendant had probable cause to arrest for an

alleged offense, which he did not, he must prove he had probable cause to detain and transport under Section 5150 of the California Welfare and Institution Code. Not only did defendant fail to meet his burden of proof, but plaintiff proved at trial, as set forth in his brief, that defendant did not have probable cause under Section 5150 of the Welfare and Institution Code to detain and transport to a mental facility.

The new appellate judge, who did not sign the appellate decision, ruled defendant was not immune because of Government Code Sections 855.8 and 856. The trial judge once stated "It appears, without question, the Government Code Section 856 does not provide an immunity for the acts complained of concerning defendant Farquar." (C.T. 95)

Defendant raised the issue of immunity under said Government Code Sections 3 times prior to trial. None of his motions were granted. It is obvious to any reasonable person that defendant is not immune under Government Code Sections 855.8 and 856.

Government Code Sections 855.8(a) and 856(a) are by themselves repugnant to the Fourth Amendment to the United States Constitution and the trial judge improperly ruled in favor of their validity.

Plenary consideration is required to put an end to the serious abuses commited by police officers who take people they dislike to a mental facility, without probable cause under Section 5150 of the California Welfare and Institution Code, and then slither out of facing up to the very serious wrong they comitted. They slither out by pretending Government Code Sections 855.8(c) and 856(c) do not exist to create an improper absolute immunity based upon Government Code Sections 855.8(a) and 856(a) which is repugnant to the United States Constitution.

I. <u>ABUSE OF DISCRETION REGARDING DISTRICT COURT PRELIMINARY</u>

INJUNCTION

Not applicable.

J. APPENDIX

(i) COPIES OF OPINIONS, ORDERS, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

JUDGMENT, entered July 1, 1982.

STATEMENT OF DECISION, filed July 1, 1982.

DECISION OF COURT OF APPEAL, filed August 12, 1983.

ORDER on PETITION FOR REHEARING, filed August 31, 1983.

ORDER OF CALIFORNIA SUPREME COURT, filed October 5, 1983.

(ii) COPIES OF OTHER SUCH OPINIONS, ORDERS, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

ORDER DENYING DEFENDANT'S MOTION TO REQUIRE PLAINTIFF TO POST SECURITY, filed April 19, 1982.

(iii) COPY OF JUDGMENT APPEALED FROM

Same as (i), supra.

(iv) COPY OF NOTICE OF APPEAL SHOWING DATE FILED AND NAME OF COURT WHERE FILED

NOTICE OF APPEAL, served November 1, 1983 & file stamped November 16, 1983.

(v) ANY OTHER APPENDED MATERIALS

COMPLAINT, filed November 5, 1979.

AMENDMENT TO COMPLAINT, filed June 17, 1980.

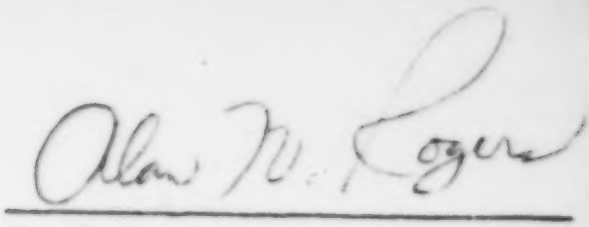
ADVISEMENT RECORD, signed by defendant Farquar and dated 8-24-79.

APPLICATION FOR 72-HOUR DETENTION FOR EVALUATION AND TREATMENT, signed by defendant and dated 8-24-79.

SAN DIEGO POLICE DEPARTMENT OFFICER'S REPORT, completed by defendant Farquar, consisting of 3 pages, with date of report August 25, 1979.

SAN DIEGO POLICE DEPARTMENT OFFICER'S REPORT, ATTN: ALL UNITS, completed by defendant Farquar, consisting of 1 page, with date of report August 25, 1979.

Dated: December 26, 1983



Alan N. Rogers
Plaintiff & Appellant

ALAN N. ROGERS
2309 5TH AVENUE
SAN DIEGO, CA 92101
233-0287

FILED
BUSINESS DIVISION
MAR 5 55 PM '79
ROBERT D. SANDWALT
CLERK, SAN DIEGO CO.
CALIFORNIA

IN THE SUPERIOR COURT OF THE SAN DIEGO JUDICIAL DISTRICT
COUNTY OF SAN DIEGO, STATE OF CALIFORNIA

NO. 443303 614

COMPLAINT FOR DAMAGES

Amendment Filed
6-17-80

ALAN N. ROGERS
PLAINTIFF

VS

SCOTT FARQUAR
8810 MARIPOSA
LA MESA, CA 92041
DEFENDANT

PLAINTIFF COMPLAINS OF DEFENDANT FOR CAUSE OF ACTION ALLEGES:

I

THAT THE PLAINTIFF LIVED AT 3700 10TH AVENUE IN THE CITY AND COUNTY OF SAN DIEGO DURING AUGUST 1979.

12

II.

THAT SAN DIEGO POLICE OFFICER SCOTT FARBUAR WENT TO THE SAID PREMISES ON AUGUST 24, 1979 AT ABOUT 8PM; THAT THE DEFENDANT INDICATED THE PLAINTIFF'S RADIO WAS TOO LOUD; THAT THE PLAINTIFF IMMEDIATELY TURNED OFF THE RADIO.

III.

THAT THE DEFENDANT WAS UPSET OVER HIS RECENT DEMOTION FROM SERGEANT TO AGENT; THAT THE DEFENDANT BLAMED THE PLAINTIFF FOR THE DEMOTION.

IV.

THAT THE DEFENDANT WAS ANGRY BECAUSE OF A POST CARD HE HAD RECEIVED; THAT THE DEFENDANT STATED THE PLAINTIFF COULD NOT GET AWAY WITH SENDING HIM SUCH A CARD.

V.

THAT THE PLAINTIFF WAS THEN VIOLENTLY TAKEN INTO CUSTODY IN AN UNAUTHORIZED MANNER BY THE DEFENDANT; THAT THE PLAINTIFF AT NO TIME RESISTED.

VI.

THAT THE PLAINTIFF WAS NOT ARRESTED; THAT THE PLAINTIFF WAS TRANSPORTED TO COUNTY MENTAL HEALTH WHERE THE DEFENDANT INDICATED HE HAD A FRIEND; THAT THE PLAINTIFF WAS ADMITTED TO COUNTY MENTAL HEALTH ON AUGUST 24, 1979.

VII

THAT AFTER BEING ADMITTED, THE PLAINTIFF DID NOT MEET HIS PSYCHIATRIST UNTIL MONDAY AUGUST 27, 1979; THAT THE PLAINTIFF WAS TOLD HE HAD NO MENTAL PROBLEMS AND HE WAS RELEASED ON AUGUST 29, 1979.

VIII

THAT THE PLAINTIFF MAILED A CERTIFIED LETTER OF COMPLAINT REGARDING SCOTT FARQUAR TO THE CHIEF OF POLICE ON AUGUST 29, 1979.

IX

WHEREFORE, PLAINTIFF PRAYS JUDGEMENT:

1. FOR COMPENSATORY DAMAGES;
2. FOR PUNATIVE DAMAGES.

DATED, 31ST DAY OF OCTOBER, 1979

Alan N. Rogers

ALAN N. ROGERS
PLAINTIFF

VERIFICATION

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

I AM THE PLAINTIFF IN THE ABOVE ENTITLED ACTION: I HAVE READ THE FOREGOING COMPLAINT AND KNOW THE CONTENTS THEREOF: AND I CERTIFY THAT THE SAME IS TRUE TO MY KNOWLEDGE.

I CERTIFY (OR DECLARE), UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON 31 OCTOBER, 1979, AT SAN DIEGO, CAL.

Alan N. Rogers

ALAN N. ROGERS

Alan N. Rogers
1450 Fourth Avenue
San Diego, Ca 92101

JUN 17 1980

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

Alan N. Rogers,
Plaintiff,
v.
Scott Farquar,
Defendant.

No. 443303
AMENDMENT TO COMPLAINT

Plaintiff amends the complaint in this action as follows:

1. On page 3, lines 7 through 9 are deleted and replaced by:

On August 29, 1979, which was within one hundred days of the acts complained of, plaintiff duly filed his claim for damages with the City of San Diego as required by Division 3.6, Part 3 of the Government Code of the State of California. Said claim was thereafter, on or about October 31, 1979, deemed denied by failure to act thereon within forty-five days.

Dated: May 31, 1980

Alan N. Rogers

Alan N. Rogers

VERIFICATION

I am the plaintiff in this action; the foregoing amendment to complaint is true of my own knowledge.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on May 31, 1980 at San Diego, California.

Alan N. Rogers

Alan N. Rogers

ADVISEMENT RECORD

152

TAINMENT ADVISEMENT RECORD

W&I Code, Section 5157 (a), and (b) requires that each pe apprehended for psychiatric evaluation be given specific informa orally, and a record be kept of the advisement by the evaluating fac

Facility: CMH

Date: 8-24-79

Name of Person Detained for Evaluation: ROGERS, ALAN NEAL

☒ Advisement Complete
☐ Advisement Incomplete

Taken Into Custody By: FARQUHAR, SCOTT #2096

Position: Police Agent

Good Cause for Incomplete Advisement:

Advisement Completed By: Scott Farquhar

Position: Police Agent

Date: 8-24-79

ADMISSION ADVISEMENT RECORD

W&I Code, Section 5157 (c), and (d) requires that each person adm for 72-hour evaluation be given specific information orally and in wr and a record of the advisement be kept in the patient's medical re

Person Performing Advisement:

Position:

Date:

Allegation of Mental Disorder Based On:

As a result of a mental disorder, patient is (check one)
☐ Danger to self ☐ Danger to others ☐ Gravely disabled

☐ Advisement Complete
☐ Advisement Incomplete

Good Cause for Incomplete Advisement:

☐ Patient has received written copy of advisement
☐ Patient has not received written copy of advisement

Date: /

MH 1589 (12/77)

ROGERS ALAN NEAL
-0996641E CHM 200

ALAN NEAL

3200 10th AVENUE # 2D, SD

I WAS CONFRONTED BY ROGERS AT A LOCAL RESTAURANT. HE HOLD EXTREMELY AGGRESSIVE AND IRRATIONAL ACTION THIS CONTINUED INTO A NEARBY PARK I STATED REPEATING THREATEN. POST COMICS. I REPEATED FEAR IN ME.

The following information has been established: (Please state with particularity sufficient information to support the belief that the person for whose evaluation and treatment is sought is in fact a danger to others, a danger to himself, or gravely disabled.)

ROGERS HAS MADE VERBAL AND WRITTEN THREATS ON MY LIFE AND THOSE OF A FEMALE COMPANION. HE HAS SENT ME 4 POST CARDS. I CONTACTED HIM BACK ON A PROFESSIONAL NOTE CONCERNING HIS CONDUCT. ON CONTACT HE WAS EXTREMELY AGGRESSIVE AND IRRATIONAL. HE INVOKE TYPE OF VERBAL AND PHYSICAL CONFRONTATION WHEN HE RECOGNIZED WHO I WAS

Based upon the above information I believe that as a result of mental disorder:

[X] Yes
[ ] A danger to others.
[ ] A danger to himself.
[ ] Gravely disabled.

[X] No

Certification of Criminal Charges
(W & I Code §5150.1, also §5152.1)

[ ] Hospitalization is requested of persons who have refused [illegible] for which criminal charges might be filed.

Signature of Peace Officer

801 W. MARKET, SD

Signature

Date: 8-24-19

Phone: 236-5911

Name of Law Enforcement Agency or Facility

801 W. MARKET, SD

APPLICATION FOR 72-HOUR DETENTION FOR EVALUATION AND TREATMENT

Confidential Clinical Portion - Information

Welfare and Institutions Code

Best Copy Available

SAN DIEGO POLICE DEPARTMENT — "153" ONLY

OFFICER'S REPORT

154

PAGE 1/2 OF — CASE / DOC. #

0-96 THREATS ON POLICE OFFICER		AUG	24	79	2000
3700 10TH AVENUE #2D	BEAT 52	CONTINUED FROM:	☐ ARR./INV. CON. ☐ CRIME		☐ MISC. CITE. ☐ OTHER
ROGERS, ALAN NEAL W/M 6-8, 245 6-3-40					PROPERTY WAS NOTED

I WAS HAVING DINNER INSIDE THE CHICKEN PIC SHOP, M AND ROBINSON APPROXIMATELY A MONTH AGO WHEN A LARG W/M, LATER IDENTIFIED AS ROGERS CAME OVER TO MY TABLE. HE ASKED A QUESTION CONCERNING OUR RADIO PROCEDURES & WAS STARING AT MY BADGE AND IDENTIFICATION PLATE. ROGE WENT BACK TO HIS TABLE AND I ASKED HIM WHY HE WANTE MY NAME. I VOLUNTEERED TO GIVE HIM ANY INFORMATION HE NEEDED AND EXPRESSED CONCERN OVER WHY HE WANTED MY BADGE NUMBER WHEN HE ASKED ABOUT RADIO PROCEDURES. AT THIS POINT, ROGERS BECAME VERY BELLIGERENT AND TOLD ME I WAS REQUIRED TO GIVE HIM ANYTHING HE WANTED. HIS FACE STARTED TO TWITCH AND HE TOLD ME I WAS NOTHING AND HE COULD BREAK ME IN HALF. THE OWNER OF THE RESTAURANT STEPPED IN AND CALMED ROGERS DOWN. I RETURNED TO MY TABLE LEAVING THE NUMBER AND ROGERS TALKING.

APPROXIMATELY A WEEK AFTER THIS INCIDENT, I RECEIVE THE FIRST OF FOUR 5"x8" BLUE POSTCARDS SIGNED AL. IN ALL CASES, THE CARDS WERE SEXUALLY EXPLICIT AND WITH CARDS 2 AND 3 MY LIFE WAS THREATENED. I HAD RECEIVED DEATH THREATS AND OTHER SUCH CARDS BEFORE AND REALLY DIDN'T THINK MUCH ABOUT IT UNTIL I TALKED TO MY FELLOW OFFICERS. I DECIDED WHEN I RECEIVED THE LAST ONE ON AUGUST 21, 1979 THAT I WOULD SAVE IT FOR PRINTS AND CONDUCT HOMICIDE. I WAS UNABLE TO GET TO HOMICIDE FOR THE NIGHT OF AUGUST 24, 79 SO I HAND THE CARD WITH ME WHEN I WENT INTO THE FIELD.

AT APPROXIMATELY 2000 HOURS, I RECEIVED A RADIO CALL OF A DISTURBANCE INVOLVING A LOUD RADIO AT 3700 10TH AVENUE, BEAT 2D.

REPORTING OFFICER	I.D. #	DIVISION	DATE OF REPORT	MONTH	DAY	YEAR	TIME
SCOTT FAMOUSEL	3096	WD		AUG	25	79	23:

SAN DIEGO POLICE DEPARTMENT

OFFICER'S REPORT

(CONTINUED)

CASE# 155

SUBJECT 10-96 THREATS ON A POLICE OFFICER DATE 8-25-74

ON ANNUAL AT APARTMENT 2D I COULD HEAR A VERY LOUD RADIO. I KNOCKED ON THE DOOR AND ALAN ROGERS ANSWERED. HE WANTED TO KNOW WHAT I WANTED AND I TOLD HIM THE RADIO WAS TOO LOUD. ROGERS TURNED IT DOWN AND STARTED TO SMILE IN A STRANGE WAY. HIS FACE STARTED TO TWITCH AND HE STARTED TO LOOK LIKE HE WAS GOING TO PUNCH ME WITH HIS RIGHT CLOSED FIST. AT THIS POINT, I FEARED FOR SAFETY AND WOULD OF GONE FOR COVER WHEN OFFICER BRIDGMAN ARRIVED. ROGERS MADE SEVERAL STATEMENTS ABOUT MY IDENTITY AND THAT I WAS A PERVERT AND LIED WITH TRANSVESTITES. HE CONTINUED HIS STATEMENTS THAT WERE VERY SIMILAR TO ONES I HAD RECEIVED ON THE BLUE CARDS THROUGH THE MAIL. HE MADE THREATS TO MY SAFETY AND OFFICER BRIDGMANS I ASKED ROGERS FOR SOME IDENTIFICATION AND HE PRODUCED A DRIVERS LICENSE THAT SHOWED HIS NAME WAS ALAN NEAL ROGERS, 6-8, 245, 6-3-40, SS 368-38-6362. I REMEMBERED THE CARDS SENT TO ME WERE SIGNED AL AND THAT HE REMEMBERED MY NAME ON INITIAL CONTACT. HE ALSO HAD MADE SEVERAL SEXUAL COMMENTS THAT WERE SIMILAR TO ONES ON THE CARDS SENT TO ME THROUGH THE MAIL.

ROGERS WAS BECOMING INCREASINGLY MORE AND MORE BELLIGERENT AND COMBATIVE.

I ADVISED HIM HE WAS UNDER ARREST FOR THREATS I HAD RECEIVED IN THE MAIL FROM HIM. I ALSO TOLD HIM I WAS PROBABLY GOING TO TAKE HIM TO COMMUNITY MENTAL HEALTH. OFFICER BRIDGMAN AND I BOTH FEARED FOR OUR SAFETY AT THIS POINT SO WE BOTH GRABBED AN ARM AND WALKED ROGERS OUTSIDE TO A PATROL CAR. ROGERS WAS ABLE TO MOVE US WITHOUT MUCH EFFORT SO WE HANDCUFFED HIM AND PLACED HIM IN THE POLICE VEHICLE.

I ASKED ROGERS IF HE WANTED ME TO LOCK UP HIS APARTMENT. HE DIDN'T ANSWER SO I RETURNED TO HIS APARTMENT AND WENT INSIDE TO TURN OFF THE LIGHTS, FIND A LANDLORD AND TO CHECK FOR POSSIBLE EVIDENCE FROM THE THREATS.

SAN DIEGO POLICE DEPARTMENT "153" ONE

OFFICER'S REPORT

156

PAGE 1 OF 2 | CASE / DOC #

ATTN:

TYPE OF INCIDENT		MONTH	DAY	DAY OF WEEK	YEAR
THREAT TO POLICE OFFICER		AUG	24		2004
LOCATION OF INCIDENT	BEAT	DISPATCHED FROM: ☐ ADM./INV. CON. ☐ CRIME			☐ MISC. CITY ☐ OTHER
3700 KEARNY MESA RD #20					
SUSPECT(S) INVOLVED				PROPERTY TAG NOS.	
ROGERS, ALAN NMN M/W 6-8, 245, 6-3-40					

I SAW SOME WRITING MATERIALS ON A DRESSER NEAR THE DOOR. I SEIZED SEVERAL BLUE CARDS SIMILAR TO THE ONES I HAD BEEN RECEIVING. I LOCKED THE DOOR AND RETURNED TO THE PATROL CAR. I FOLLOWED OFFICER BRIDGEMAN TO CENTRAL WHERE WE MADE A THOROUGH RECORDS SEARCH AND PHOTOGRAPHED AND PRINTED ROGERS.

I TALKED TO ROGERS OVER AND OVER AGAIN AND IT BECAME VERY CLEAR THAT HE WAS A DANGER TO HIMSELF AND TO ANYONE THAT WOULD COME IN CONTACT WITH HIM. I TRANSPORTED HIM TO COMMUNITY MENTAL HEALTH AND HAD HIM EVALUATED FOR A 72 HOUR HOLD. THE INTAKE DOCTOR STATED ROGERS WAS VERY PARANOID AND HAD THE CAPACITY TO HURT OR EASILY KILL SOMEONE.

THE DOCTOR ALSO DESCRIBED ROGERS AS A DUPLICATE OF THE SON OF SAM KILLER FROM NEW YORK. SHE FELT HE SHOULD BE TRANQUILIZED UNTIL HE COULD BE EVALUATED.

I SENT A SHORT 153 TO MY UNITS AND ADVISED THEM OF THE THREATS ROGERS MADE TO ME AND HIS VERY VIOLENT BEHAVIOR.

REPORTING OFFICER	I.D. #	DIVISION	DATE OF REPORT	MONTH	DAY	YEAR	
SCOTT FANGUAN	2094	W-2		AUG	25	04	2

UNITS O

1/1

15

2-96 - THREATS POLICE OFFICER AUG 24 79

3700 10TH AVENUE 52

ROGERS, ALAN NEAL W/M 6-8, 245

THIS SUBJECT WAS PLACED INTO CMH 8-24-79. HE WAS DESCRIBED BY THE STAFF PSYCHIATRIST AS A SON OF BITCH. HE HAS BEEN SENDING DEATH THREATS TO ME FOR SEVERAL WEEKS. IT IS THE OPINION OF CMH THAT HE HAS THE CAPABILITY TO KILL SOMEONE AND COULD AND WOULD IF STOPPED BY A POLICE OFFICER.

USE EXTREME CAUTION IF CONTACTED.

HE IS DESCRIBED AS 6-8, 245, BRN/BRN, 6-3-40. S/S 368-38-6362, 3700 10TH AVENUE, APT 2D

SCOTT FERGUSON 2016 W-2 AUG 25 79

1

168

Alan H. Rogers
3362 Meade Avenue
San Diego, CA 92116

APR 19 1982

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

Alan H. Rogers,
Plaintiff,
v.
Timothy Scott Farquar,
Defendant.

No. 443303

ORDER DENYING DEFENDANT'S MOTIONS FOR SUMMARY JUDGMENT AND TO REQUIRE PLAINTIFF TO POST SECURITY

Defendant's motions for summary judgment and to require plaintiff to post security came on regularly for hearing on April 8, 1982 at 1:30PM in Department 12 of the above-entitled Court before Judge Edward Butler. Alan H. Rogers, responding party and plaintiff, appeared in propria persona. Defendant was represented by Kenneth K.I. So.

Both matters were argued and submitted for decision. After due consideration to said matters and good reason appearing therefor:

IT IS ORDERED that both said motions be denied.

Dated: APR 19 1982

Judge of the Superior Court
EDWARD T. BUTLER

JOHN W. WITT, City Attorney
RONALD L. JOHNSON, Chief Deputy
KENNETH SO, Deputy
Office of City Attorney
Litigation Division
233 A Street, Suite 300
San Diego, CA 92101

Telephone: (714) 236-7221

Attorneys for Defendant
Timothy Scott Farquar

Received
JUL 1 1982
W. M. BARKER, Clerk

ENTERED
JUL 1 1982
Judgment Book 1436 Pg 192

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

ALAN N. ROGERS, Plaintiff, v. TIMOTHY SCOTT FARQUAR, Defendant.	No. 443303 [redacted] JUDGMENT

This cause came on regularly for trial on June 2, 1982 in Department 23 of the above-entitled court, the Honorable William L. Todd, Jr., Judge, presiding, sitting without a jury, a jury having been duly waived. Plaintiff, Alan N. Rogers, appeared in pro per. Defendant, Timothy Scott Farquar, appeared by and with his attorney, Deputy City Attorney, Kenneth So. Evidence, both oral and documentary was presented by plaintiff. Defendant, Timothy Scott Farquar's motion for judgment pursuant to Code of Civil Procedure Section 631.8 having been argued and submitted for decision, and the Court having caused to be made and filed herein, its written statement of decision;

. . .

. . .

IT IS ORDERED, ADJUDGED, AND DECREED that:

1. Plaintiff take nothing by reason of his complaint filed herein;

2. Judgment be entered in the above-entitled cause in favor of defendant, Timothy Scott Farquar, and against plaintiff, Alan H. Rogers;.

3. Defendant recover from plaintiff costs incurred. $149.10

Dated: JUL 1 1982

Judge of the Superior Court
WILLIAM L. TODD, JR.

Received
220 4/4 7 1982
Filed
JUL 1 1982

JOHN W. WITT, City Attorney
RONALD L. JOHNSON, Chief Deputy
KENNETH SO, Deputy
Office of City Attorney
Litigation Division
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Telephone: (714) 236-7221

Attorneys for Defendant
Timothy Scott Farquar

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

ALAN N. ROGERS, Plaintiff, v. TIMOTHY SCOTT FARQUAR, Defendant.	No. 443303 [redacted] STATEMENT OF DECISION

This matter came on regularly for trial on June 2, 1982 in Department 23 of the above-entitled court, the Honorable William L. Todd, Jr., Judge, presiding. Plaintiff, Alan N. Rogers, appeared in pro per. Defendant, Timothy Scott Farquar, appeared by and with his attorney, Deputy City Attorney, Kenneth So. Evidence, both oral and documentary, was presented by plaintiff.

The Court, having heard, received and considered the evidence and defendant Farquar's motion for judgment pursuant to Code of Civil Procedure Section 631.8, having been argued and submitted for decision:

. . .

. . .

. . .

NOW THEREFORE, the Court makes the following statement of decision:

1. Timothy Scott Farquar became a police officer with the City of San Diego in 1974. In May, 1979, Officer Farquar was promoted to the rank of agent. In March, 1980, Officer Farquar was promoted to the rank of sergeant.

2. In the latter part of July, 1979, Officer Farquar was seated having dinner in a restaurant on Fifth Avenue in the City of San Diego. Alan H. Rogers walked up to Officer Farquar, asked him questions about police radio procedures, and looked at the officer's name tag and badge number.

3. Officer Farquar asked Rogers why he wanted that information. At this time, Rogers raised his voice, told Officer Farquar that Officer Farquar was to give him anything he wanted and stated that he could break Officer Farquar in half.

4. The owner of the restaurant stepped in and calmed Rogers down.

5. About a week after the incident, Officer Farquar received the first of four five-inch by eight-inch, blue-colored postcards. The postcards were signed "Al." The postcards were sexually explicit and referred to Officer Farquar as a transvestite and pervert. One card stated to the effect that the sender of the card was going to cut Officer Farquar up and cut off Officer Farquar's "balls."

6. On August 24, 1979 at about 8:00 p.m., Officer Farquar received a radio call regarding a disturbance involving a loud

. . .

. . .

radio at 3700 Tenth Avenue, Apartment 2D.

7. Officer Farquar arrived at the address and spoke with the apartment manager. The apartment manager stated other tenants had complained about the loud radio in Rogers' apartment and that the apartment manager was willing to sign a complaint against Rogers for Penal Code Section 415(2).

8. As Officer Farquar walked up to apartment 2D, he could hear a very loud radio. Officer Farquar knocked on the door, and Alan Rogers answered. Officer Farquar told Rogers the radio was too loud. Officer Farquar had difficulty talking with Rogers because of the noise. Rogers turned the radio down.

9. Rogers ~~started to smile and his~~ face started to twitch. The muscles in Rogers' body became tense and rigid and he began to clench his fists as he stood at the door to his apartment. At this time, Officer Bridgman arrived.

10. Rogers made statements indicating he knew who Officer Farquar was. Rogers called Officer Farquar perverted and stated Officer Farquar lived with transvestites and transvestite whores. Rogers continued to make statements that were similar to the statements on the postcards Officer Farquar had received through the mail.

11. Officer Farquar asked Rogers for some identification and Rogers produced and showed Officer Farquar a driver's license with the name of Alan Neal Rogers.

12. Rogers continued to say Officer Farquar was perverted and lived with transvestites. Rogers' voice became louder and

. . .

. . .

he started breathing quickly.

13. Officer Farquar concluded that Rogers had sent him the blue-colored postcards and that Rogers' mental condition should be examined.

14. Officer Farquar advised Rogers that Rogers was under arrest for threats Officer Farquar had received in the mail. Rogers was also told he would probably be taken to a mental health facility.

15. Officer Farquar and Officer Bridgman each placed one of their hands on one of Rogers' arms and walked Rogers outside. When outside, Rogers was handcuffed. Rogers' face or body was not slammed against one of the police cars.

16. Officer Farquar began to secure Rogers' apartment. Officer Farquar turned off the air-conditioner inside the apartment. While inside Rogers' apartment, Officer Farquar saw on a dresser several five-inch by eight-inch blue-colored postcards which were the same size and blue color of the cards he had received in the mail.

17. Rogers was taken to the San Diego Police station where Officer Farquar reviewed the situation with Officer Farquar's supervisor. Officer Farquar did not threaten to harm Rogers.

18. Rogers continued to say Officer Farquar was a pervert and lived with transvestites.

19. Rogers was taken and admitted to County Mental Health which is on Dickinson Avenue in San Diego.

20. When Rogers was taken into custody, "probable cause" existed for Officer Farquar to take Rogers into custody for a

. . .

violation of Title 18 United States Code Section 876, Penal Code Section 415(2), San Diego Municipal Code Section 59.5.0501, and Welfare and Institutions Code Section 5150.

21. Pursuant to Government Code Sections 856 and 855.8(a) Officer Farquar is not liable for false imprisonment as a result of Officer Farquar's diagnosis or determination to confine Rogers because of mental illness.

Dated: JUL 1 1982

Judge of the Superior Court
WILLIAM L. TODD, JR.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

AUG 12 1987
KEENAN G. CASADY, Clerk

ALAN N. ROGERS,	)	
	)	
Plaintiff and Appellant,	)	
	)	
v.	)	
	)	
TIMOTHY SCOTT FARQUAR,	)	4 Civ. No. 28158
	)	
Defendant and Respondent.	)	(Super. Ct. No. 443303)
	)	

APPEAL from a judgment of the Superior Court of San Diego County, William L. Todd, Jr., Judge. Affirmed.

Alan Rogers sued San Diego Police Officer Timothy Farquar for false arrest. Following a nonjury trial, the court found Farquar had probable cause to arrest Rogers and under Government Code sections 856 and 855.8, subdivision (a), Farquar was immune from liability for taking Rogers to Community Mental Health (CMH) for an evaluation. The court accordingly awarded Rogers nothing on his suit. Rogers appeals, contesting both of the trial court's findings.

Rogers confronted Officer Farquar in a restaurant and became belligerent and threatening. Afterwards, Farquar received several blue postcards signed "Al" in which the author made sexual remarks about Farquar and threatened him.

Sometime later Farquar responded to a radio call concerning loud music at an apartment building. When he arrived at the building, he heard a radio being played very loudly in Rogers' apartment. Farquar contacted the manager who complained about the noise and said he was willing to sign a misdemeanor complaint against Rogers. The manager also said he had received several complaints from other tenants about Rogers' radio. Farquar confronted Rogers who made comments about Farquar's sex life, became loud and belligerent and began breathing in an unusual manner. Farquar arrested Rogers and while securing his apartment discovered several blue postcards similar to the ones he had received in the mail. Rogers continued to make sexual remarks about Farquar while being booked at county jail, so the officer transported him to CMH for an evaluation. After being confined there for a few days, Rogers was released.

The trial court found Farquar had probable cause to arrest Rogers for sending threats through the mail (Tit. 18 U.S.C. 876), disturbing the peace (Pen. Code, § 415, subd. (2); San Diego Mun. Code, § 59.5.0501) and under Welfare and Institutions Code section 5150, thus there was no false arrest.

Rogers claims probable cause did not exist under any of these sections. If it did exist under any of them, however, Rogers' claim of false arrest is invalid.

Penal Code section 415, subdivision (2), prohibits the malicious and wilfull disturbing of another by loud and unreasonable noise. San Diego Municipal Code section 59.5.0501 prohibits one from making any disturbing, excessive or offensive noises which causes discomfort or annoyance to any reasonable person. Farquar, the apartment manager and several other tenants heard the loud noise Rogers' radio made and were annoyed by it. Farquar had probable cause to arrest Rogers for disturbing the peace under either statute. Therefore, there was no false arrest.

Rogers claims neither Government Code section 856 nor 855.8, subdivision (a), provides Farquar with immunity for turning him over to CMH for evaluation. Section 856, subdivision (c), provides such immunity but also states "Nothing in this section exonerates a public employee from liability . . . proximately caused by his negligent or wrongful act . . . ." Rogers claims he falls under this exception, however, the trial court in finding Farquar immune under section 856 <u>in its entirety</u> by inference found this exception did not apply to Farquar and the evidence supports this.

Section 855.8, subdivision (a), provides immunity from injury resulting from diagnosing mental illness. Rogers claims

Farquar did not, in the medical sense, diagnose his illness. Be that as it may, Farquar is still immune from liability under section 856.

Rogers claims he proved all the allegations in his complaint. Even if that were true, he still has not made out a case for himself for false arrest, for in none of those allegations does he contend he was arrested without probable cause.

Judgment affirmed.

STANIFORTH, J.

WE CONCUR:

COLOGNE, ACTING P.J.

WORK, J.

COURT OF APPEAL—STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

ALAN N. ROGERS,
Plaintiff & Appellant

vs

TIMOTHY SCOTT FARQUAR,
Defendant & Respondent

4 Civ. No 28158

SUPERIOR COURT NO 443303

ORDER

THE COURT

The petition for rehearing is denied.

Acting Presiding Justice

Copies to: All Parties

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

OCT 5 1987

I have this day filed Order _____

In re 4 Civ. No 28158

ALAN N. ROGERS

on

TIMOTHY SCOTT FARQUAR

Respectfully,

Clerk

Alan N. Rogers
3362 Meade Avenue
San Diego, CA 92116

COPY

RECEIVED
NOV 1 6 1983
Court of Appeal Fourth Dist.
San Diego

SUPREME COURT OF THE STATE OF CALIFORNIA

ALAN N. ROGERS, Plaintiff & Appellant, v. TIMOTHY SCOTT FARQUAR, Defendant & Respondent.	No. 4 Civil 28158 NOTICE OF APPEAL

To the Clerk of the above-entitled Court:

NOTICE IS HEREBY GIVEN that plaintiff and appellant ALAN N. ROGERS hereby appeals to SUPREME COURT OF THE UNITED STATES under the authority of Title 28, United States Code, Section 1257, from the following judgments: (1) decision of Supreme Court of the State of California rendered in the above-entitled action on October 5, 1983 denying plaintiff's Petition for Hearing served and filed on September 8, 1983, (2) decision of Court of Appeal of the State of California, Fourth Appellate District, Division One, rendered on August 12, 1983, affirming judgment of Superior Court, (3) decision of said Court of Appeal,

rendered on August 31, 1983, denying plaintiff's Petition for Rehearing, and (4) decision of Superior Court of the State of California in and for the County of San Diego, rendered at tri in ALAN N. ROGERS v. TIMOTHY SCOTT FARQUAR, San Diego Superior Court Case Number 443303, on June 2, 1982, in favor of said defendant, said Order providing the granting of defendant's motion for judgment brought under Code of Civil Procedure of the State of California, Section 631.8.

Dated: November 1, 1983

Alan N. Rogers

Alan N. Rogers
Plaintiff & Appellant

Alan N. Rogers
3362 Meade Avenue
San Diego, CA 92116

RECEIVED
DEC 31 1983
OFFICE OF THE CLERK
SUPREME COURT, U.S.

ORIGINAL

[redacted]

SUPREME COURT OF THE UNITED STATES

83-6021

ALAN N. ROGERS, Plaintiff & Appellant, v. TIMOTHY SCOTT FARQUAR, Defendant & Appellee.	CASE NUMBER _____ 4TH CIVIL NUMBER 28158 443303 AFFADAVIT OF ALAN N. ROGERS

ALAN N. ROGERS, being first duly sworn, deposes and says:

1. I am the plaintiff and appellant in the above-entitled action. I have personal knowledge of all of the facts and circumstances set forth in this Affadavit, and if called as a witness in this matter, could and would testify competently thereto.

2. I am submitting this Affadavit in support of my Motion to Proceed on Appeal without being required to prepay fees, costs or give security therefor.

3. I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor and that I believe I am entitled to redress.

4. Leave to proceed in forma pauperis was never sought in any court below.

5. This case is a Civil Action for False Imprisonment against defendant Farquar which occurred between August 24, 1979 and

August 29, 1979.

6. This appeal is brought under the authority of Title 28, United States Code, Section 1257(2) where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution of the United States and the decision was in favor of its validity.

7. I further swear that the responses to the following relating to my ability to pay the costs of the appeal, responses numbered 8 through 12, infra, are true:

8. Are you presently employed? Yes.

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

$4.00 per month ($48.00 per year), ROGERS OIL INCORPORATED, 3362 Meade Avenue, San Diego, CA 92116.

$1.00 per month ($12.00 per year), which is not being paid to me, ROGERS MEDICAL FOUNDATION INCORPORATED, 3362 Meade Avenue, San Diego, CA 92116.

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received. Not applicable.

9. Have you received within the past twelve months any income from a business profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other sources? Yes.

a. If the answer is yes, describe each source of income and state the amount received from each during the past twelve months.

Estimated income for 1983 is about $1,348. $1,000 Judgment in ALAN N. ROGERS v. WILLIAM R. EVARTS, et al., San Diego Superior Court Case Number 478610, $48 Salary, and $300 Interest (approximate). My total income during the previous

year, 1982, was $2,604.00.

10. Do you own any cash or checking or savings account? Yes.

a. If the answer is yes, state the total value of the items owned. Approximately $300. My debts exceed this amount.

11. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordingary household furnishings and clothing)? Yes.

a. If the answer is yes, describe the property and state its approximate value. Land and improvements where I reside have assessed value of $50,500, stock in Rogers Oil Incorporated is worthless (liabilities greatly exceed assets), and notes are believed to be of little value. Assets of said corporation consist of one old automobile, a very old truck which is broken, office furnishings which could be sold for at most $100, inventory is $0, and cash is less than $5. It is believed that to sell assets would put the corporation out of business. Rogers Medical Foundation Incorporated has no assets.

12. List the persons who are dependent upon you for support and state your relationship to those persons. None.

13. I understand that a false statement or answer to any question in this affadavit will subject me to penalties for perjury.

STATE OF CALIFORNIA,)
COUNTY OF SAN DIEGO) ss.

Alan N. Rogers

Alan N. Rogers

Sworn to before me this 28th day of December, 1983.

On December 28th, 1983, before me, the undersigned, a Notary Public in and for said State, personally appeared Alan N. Rogers known to me, to be the person (/or proved to me on the basis of satisfactory evidence) whose name is ALAN N. ROGERS subscribed to the within instrument, and acknowledged to me that he executed the same.

WITNESS my hand and official seal.

Maria Elena Maldonado
Notary Public in and for said State

ORDER

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

JUSTICE OF THE UNITED STATES SUPREME COURT

No. 83-6021

Office - Supreme Court, U.S.
FILED
JAN 23 1984
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

October Term, 1983

ALAN N. ROGERS,

Appellant,

v.

TIMOTHY SCOTT FARQUAR,

Appellee.

On Appeal From The Supreme Court Of California

MOTION TO DISMISS APPEAL OR AFFIRM

RONALD L. JOHNSON
Chief Deputy City Attorney

JOHN W. WITT, City Attorney
Litigation Division
233 "A" Street, Suite 300
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Telephone: (619) 236-7221

Counsel for Appellee

January 1984

INTERIM PRINTING & MAILING COMPANY
1105 WEST MORENA BOULEVARD, SAN DIEGO, CALIFORNIA 92110 — 275-3050

TABLE OF CONTENTS

	Page
STATEMENT OF THE CASE	2
LACK OF JURISDICTION	2
THE APPEAL DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION	3
THE FEDERAL QUESTION SOUGHT TO BE REVISED WAS NOT TIMELY OR PROPERLY RAISED	3
THE JUDGMENT RESTS ON AN ADEQUATE NONFEDERAL BASIS	3
CONCLUSION	4

TABLE OF AUTHORITIES

Page

CASES

Copperweld Steel Co. v. Industrial Com., 324 U.S. 780 (1944) 4

Live Oak Water Users' Association v. Railroad Commission, 269 U.S. 354 (1925) 3

Wilson v. Cook, 327 U.S. 474 (1945) 3

CONSTITUTION

United States Constitution
Fourth Amendment 3

STATUTES

Federal

28 U.S.C. 1257(2) 1,2,3

Title 18 U.S.C. Section 876 2,3

Municipal

San Diego Municipal Code Section 59.5.0501 2,4

California Penal Code Section 415(2) 2,3

California Welfare and Institutions Code
Section 5150 2,4

California Government Code
Sections 855.8 and 856 2
Sections 855.8(a) and 856 3

No. 83-6021

IN THE

Supreme Court of the United States

October Term, 1983

ALAN N. ROGERS,

Appellant,

v.

TIMOTHY SCOTT FARQUAR,

Appellee.

On Appeal From The Supreme Court Of California

MOTION TO DISMISS APPEAL OR AFFIRM

Appellee moves that the appeal herein taken be dismissed on the ground that the United States Supreme Court does not have jurisdiction under 28 U.S.C. 1257(2); the appeal does not present a substantial federal question; the federal question sought to be reviewed was not timely or properly raised; and the judgment rests on an adequate non-federal basis; or alternatively that the judgment be affirmed.

STATEMENT OF THE CASE

On November 5, 1979, appellant filed a complaint for damages in the Superior Court for the County of San Diego, State of California, alleging he had been falsely imprisoned by appellee, a City of San Diego Police Officer.

On June 2, 1982, after a court trial, the Court awarded judgment in favor of appellee. The Court found that probable cause existed for appellee to take appellant into custody for a violation of Title 18 United States Code Section 876, California Penal Code Section 415(2), San Diego Municipal Code Section 59.5.0501, and California Welfare and Institutions Code Section 5150. The trial court additionally found that appellee was immune from liability pursuant to California Government Code Sections 856 and 855.8.

On August 12, 1983, the Court of Appeal, Fourth Appellate District, Division One, affirmed the decision of the trial court. On August 31, 1983, the Court of Appeal, Fourth Appellate District, Division One, denied appellant's petition for rehearing. On October 5, 1983, the California Supreme Court denied hearing without opinion.

LACK OF JURISDICTION

Appellant attempts to invoke the jurisdiction of this Court under 28 U.S.C., Section 1257(2). However, from the decision of the Court of Appeal, Fourth Appellate District, Division One (appellant's jurisdictional statement p. 32), and appellant's statement of the question presented by the appeal, it is apparent that in the proceedings below a state statute was not upheld upon an attack of being repugnant to the United States Constitution.

In fact, appellant never directly contended below that California Government Code Sections 855.8 and 856 had the effect of violating his constitutional rights. Nonetheless, for jurisdiction to lie under 28 U.S.C.

Section 1257(2), the decision appealed from must have passed on the validity of the statute. *Wilson v. Cook,* 327 U.S. 474, 481, 90 L.Ed. 793 (1945). Something more than a claim of federal right is necessary; the attack must be upon the *validity* of the order, not merely upon the Court's judgment. *Live Oak Water Users' Association v. Railroad Commission*, 269 U.S. 354, 357, 70 L.Ed. 305 (1925).

THE APPEAL DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION

Though appellant concludes that California Government Code Sections 855.8(a) and 856 are repugnant to the Fourth Amendment of the United States Constitution he cites no authority to show that a violation of the Fourth Amendment automatically entitles appellant to money damages in a false imprisonment lawsuit under California tort law. Accordingly, he has failed to present a substantial federal question.

THE FEDERAL QUESTION SOUGHT TO BE REVIEWED WAS NOT TIMELY OR PROPERLY RAISED

In his cause of action for false imprisonment or false arrest, appellant failed to raise the issue of whether California Government Code Sections 855.8(a) and 856 are repugnant to the Constitution in any of the proceedings below. Consequently, his current challenge is not timely or properly raised.

THE JUDGMENT RESTS ON AN ADEQUATE NONFEDERAL BASIS

The underlying cause of action for the proceedings below is for false imprisonment or false arrest under California law. The trial court, under California law, awarded judgment in favor of appellee when the Court found that probable cause to arrest appellant existed under California Penal Code Section 415(2), Title 18 U.S.C. Section 876 (sending threats

through the mail), San Diego Municipal Code Section 59.5.0501, and California Welfare and Institutions Code Section 5150. (Appellant's jurisdictional statement pp. 27-31.)

The Court should therefore dismiss this appeal as the decision is based upon state law rather than a federal question. *Copperweld Steel Co. v. Industrial Com.*, 324 U.S. 780, 785, 89 L.Ed. 1363 (1944).

CONCLUSION

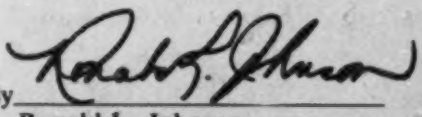
Appellant asks this Court to note probable jurisdiction in order to argue issues of federal constitutional law where those issues were not the basis of the judgment below, where no substantial federal question is involved, where the federal issues and question sought to be reviewed were not timely or properly raised, where the judgment below rests on an adequate nonfederal basis, and where no statute has been adjudged valid below.

The appeal should be dismissed or the decision below affirmed.

Dated: January 20, 1984.

Respectfully submitted,

JOHN W. WITT, City Attorney

By 

Ronald L. Johnson
Chief Deputy City Attorney

Counsel for Appellee

CASE NUMBER 83-6021

SUPREME COURT OF THE UNITED STATES

TERM 1983-1984

ALAN N. ROGERS,
Plaintiff & Appellant,
v.
TIMOTHY SCOTT FARQUAR,
Defendant & Appellee.

ON APPEAL FROM CALIFORNIA COURT OF APPEAL, FOURTH DISTRICT

OPPOSITION TO DEFENDANT'S MOTION TO DISMISS APPEAL OR AFFIRM

ALAN N. ROGERS
3362 Meade Avenue
San Diego, CA 92116

Appellant

TOPICAL INDEX

	Page
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT	1
UNITED STATES SUPREME COURT HAS JURISDICTION	1
APPEAL PRESENTS A SUBSTANTIAL FEDERAL QUESTION	2
FEDERAL QUESTION SOUGHT TO BE REVIEWED WAS TIMELY AND PROPERLY RAISED	2
JUDGMENT DOES NOT REST ON AN ADEQUATE NONFEDERAL BASIS	3
JUDGMENT SHOULD NOT BE AFFIRMED	5
CONCLUSION	5

TABLE OF AUTHORITIES

	Page
CALIFORNIA GOVERNMENT CODE SECTION 855.8	1
CALIFORNIA GOVERNMENT CODE SECTION 856	1
CALIFORNIA WELFARE & INSTITUTUION CODE, SECTION 5150 ...	2
UNITED STATES CODE, TITLE 28, SECTION 1257	1
UNITED STATES CODE, TITLE 28, SECTION 2101	3
UNITED STATES CONSTITUTION, AMENDMENT 4	1

PRELIMINARY STATEMENT

United States Supreme Court has jurisdiction. (J.S. 3 & 9)* Appeal presents a substantial federal question. (J.S. 8-9) Question sought to be reviewed was timely and properly raised. (J.S. 7-8) Judgment does not rest on an adequate nonfederal basis. (J.S. 1, 3 & 7-9) Judgment should not be affirmed. (J.S. 8-9)

UNITED STATES SUPREME COURT HAS JURISDICTION

This appeal is brought under the authority of Title 28, United States Code, Section 1257(2) where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution of the United States and the decision was in favor of its validity. This confers jurisdiction.

Government Code Sections 855.8(a) and 856(a) are by themselves repugnant to the Fourth Amendment to the United States Constitution since they permit a police officer to seize and search a person without probable cause as required by the Fourth Amendment. The trial judge ruled in favor of the validity of said Government Statutes after plaintiff objected to their constitutionality.

All previous rulings in the case at bar were against said sections providing immunity because of Government Code Sections 855.8(c) and 856(c) and because Government Code Sections 855.8(a) and 856(a) are by themselves unconstitutional.

At trial and during the appeal, the judges either believed California Government Code Sections 855.8(a) and 856(a) were constitutional or failed to deal with said raised issue in their statement.

Since defendant first purported his immunity under said Government Code Sections, plaintiff and appellant objected each time on the ground said statutes violated his constitutional rights. Judges prior to trial agreed with plaintiff. Judges

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* JURISDICTIONAL STATEMENT (filed December 31, 1983)

after that purported Government Code Sections 855.8(a) and 856(a) by themselves were constitutional or they failed to deal with the issue in their statement.

It is obvious the United States Supreme Court has jurisdiction in the above-entitled action.

APPEAL PRESENTS A SUBSTANTIAL FEDERAL QUESTION

The substantial federal question is whether the United States Constitution, Amendment 4, can continue to be offended by the California Courts who have permitted improper immunity in order to wrongfully save the City of San Diego from a loss at trial. (J.S. 8-9)

Plenary consideration is required to put an end to the serious abuses committed by police officers who take people they dislike to a mental facility, without probable cause under Section 5150 of the California Welfare and Institution Code, and then slither out of facing up to the very serious wrong they committed. They slither out by pretending Government Code Sections 855.8(c) and 856(c) do not exist to create an improper absolute immunity based upon Government Code Sections 855.8(a) and 856(a) which is repugnant to the United States Constitution.

Defendant's new attorney is wrong when he purports no substantial federal question was raised because appellant "cites no authority to show that a violation of the Fourth Amendment automatically entitles appellant to money damages in false imprisonment lawsuit under California tort law."

There is a substantial federal question which has been properly raised by appellant.

FEDERAL QUESTION SOUGHT TO BE REVIEWED WAS TIMELY AND PROPERLY RAISED

"Government Code Sections 855.8(a) and 856(a) are by

themselves repugnant to the Fourth Amendment to the United States Constitution and the trial judge ruled in favor of their validity." (J.S. 8) "Government Code Sections 855.8(a) and 856(a) are by themselves repugnant to the Fourth Amendment to the United States Constitution and the trial judge improperly ruled in favor of their validity." (J.S. 9)

The issue regarding the constitutionality of said Government Code Statutes was raised at trial by plaintiff. The trial judge ruled said sections "a" by themselves were constitutional. Defendant's trial attorney Kenneth K.Y. So was present when this occurred.

Defendant's new attorney, who may not have carefully read the Jurisdictional Statement, purports appellant failed to raise the issue of said sections being repugnant to the Constitution in any of the proceedings below. After defendant first purported he was immune under said Government Code Statutes, the question sought to be reviewed was repeatedly raised at all stages including hearings, trial, and appeals.

The issue of repugnancy does not belong in plaintiff's cause of action, as alleged by the new attorney, since the cause of action is plaintiff's complaint for false imprisonment against defendant Farquar.

The appeal itself was made in a timely manner. On October 5, 1983, Petition for Hearing was denied by California Supreme Court. On November 1, 1983, plaintiff and appellant caused Notice of Appeal to Supreme Court of the United States to be served and filed. On November 16, 1983, California Court of Appeal filed said document. This fully complied with the 90 day time factor requirement stated in Title 28, United States Code, Section 2101(c).

JUDGMENT DOES NOT REST ON AN ADEQUATE NONFEDERAL BASIS

Judgment at trial was based on a federal question. The

question is whether a police officer can be improperly permitted immunity from civil litigation for false imrisonment by a trial judge who chooses to ignore California Government Code Sections 855.8(c) and 856(c) and consider only Government Code Sections 855.8(a) and 856(a) which renders California Government Code Sections 855.8 and 856 repugnant to the Fourth Amendment of the United States Constitution. Said sections are repugnant since they permit a police officer to seize and search a person without probable cause required by the Fourth Amendment.

In ruling Government Code Sections 855.8(a) and 856(a) by themselves to be constitutional, the trial judge essentially rewrote Section 5150 of the California Welfare and Institution Code to delete all references to required probable cause. The probable cause requirement must remain a prerequisite in order for a police officer to lawfully take a person into custody and transport him to a mental facility.

The elimination of the required probable cause is a very dangerous precedent leading to continued violations of the constitutional rights of individuals without the possibility of redress of greviences through the judicial system and leading to continued serious criminal misuse of mental facilities.

If the trial judge had ruled Subsections "a" were by themselves unconstitutional rather than constitutional, which would have been consistent with the hearing rulings, then the trial verdict would have been for plaintiff rather than for defendant.

Even if defendant had probable cause to arrest for an offense allegedly committed, which he did not, he must still prove he had probable cause to detain and transport plaintiff under Section 5150 of the California Welfare and Institution Code. If defendant failed to do this, and he did fail, then he would be guilty of falsely imprisoning plaintiff.

Pursuant to Welfare and Institution Code Section 5150, in order to detain and transport plaintiff to a mental facility, plaintiff must have a mental disorder and be a danger to others or a danger to himself or gravely disabled. When this occurs, a peace officer may upon reasonable cause, take a person into custody and transport him to a mental facility. Defendant failed to meet his burden of proof at trial. In fact, plaintiff proved at trial, as set forth in his brief, that defendant did not have probable cause to detain plaintiff and transport him to a mental facility.

Thus, the verdict would have been for plaintiff since defendant did not prove he had probable cause to detain plaintiff and transport him to a mental facility.

JUDGMENT SHOULD NOT BE AFFIRMED

Judgment should not be affirmed. (J.S. 8-9)

Plenary consideration is required to put an end to the serious abuses committed by police officers who take people they dislike to a mental facility, without probable cause under Section 5150 of the California Welfare and Institution Code, and then slither out of facing up to the very serious wrong they committed. They slither out by pretending Government Code Sections 855.8(c) and 856(c) do not exist to create an improper absolute immunity based upon Government Code Sections 855.8(a) and 856(a) which is repugnant to the United States Constitution.

CONCLUSION

Based upon the aforesaid, appellant requests defendant's motion to dismiss appeal or affirm be denied.

Dated: January 23, 1983

Alan N. Rogers

SUPREME COURT OF THE UNITED STATES ~~SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO~~			FOR COURT USE ONLY
TITLE OF CASE (Abbreviated) ALAN N. ROGERS v. TIMOTHY SCOTT FARQUAR			
ATTORNEY(S) NAME AND ADDRESS Alan N. Rogers 3362 Meade Avenue San Diego, CA 92116			
ATTORNEY(S) FOR Plaintiff	TELEPHONE	HEARING DATE-TIME-DEPT	CASE NUMBER 83-6021

DECLARATION OF SERVICE BY MAIL

I, the undersigned declare: That I am, and was at the time of service of the papers herein referred to, over the age of eighteen years, and not a party to the action, and I am

employed (Residing/Employed) in the County of San Diego, California, in which county the within-mentioned mailing occurred. My business (Residence/Business) address is 150 W. Broadway (No., Street) San Diego, CA (City, State) I served the following document(s) OPPOSITION TO DEFENDANT'S MOTION TO DISMISS APPEAL OR AFIRM (set forth exact title of document(s))

by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

Ronald L. Johnson
Kenneth K.Y. So
233 A Street, Suite 300
San Diego, CA 92101

I then sealed each envelope and, with the postage thereon fully prepaid, deposited each in the United States mail at San Diego California, on January 24 19 84.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 24 19 84 at San Diego (Place) California.

Susan Schwartz.
(Signature)

PROOF OF SERVICE BY MAIL

(C.C.P. 1013a and 2015.5)

Form 9A Co. Clk. (Rev. 7-80)